

intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention.

(35 U.S.C. 6, Pub. L. 97-247)  
[48 FR 2709, Jan. 20, 1983]

#### **§ 1.43 When the inventor is insane or legally incapacitated.**

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may make the necessary oath or declaration, and apply for and obtain the patent.

(35 U.S.C. 6, Pub. L. 97-247)  
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#### **§ 1.44 [Removed and Reserved]**

(35 U.S.C. 6, 111, 116, 117, 118)  
[65 FR 54603, Sept. 8, 2000]

#### **§ 1.45 Joint inventors.**

(a) Joint inventors must apply for a patent jointly and each must make the required oath or declaration: neither of them alone, nor less than the entire number, can apply for a patent for an invention invented by them jointly, except as provided in §1.47.

(b) Inventors may apply for a patent jointly even though

- (1) They did not physically work together or at the same time,
- (2) Each inventor did not make the same type or amount of contribution, or
- (3) Each inventor did not make a contribution to the subject matter of every claim of the application.

(c) If multiple inventors are named in a nonprovisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter of at least one claim of the application and the application will be considered to be a joint application under 35 U.S.C. 116. If multiple inventors are named in a provisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter disclosed in the provisional application and the provisional application will be considered to be a joint application under 35 U.S.C. 116.

(35 U.S.C. 6, Pub. L. 97-247)  
[48 FR 2709, Jan. 20, 1983, as amended at 50 FR 9379, Mar. 7, 1985; 60 FR 20195, April 25, 1995]

#### **§ 1.46 Assigned inventions and patents.**

In case the whole or a part interest in the invention or in the patent to be issued is assigned, the application must still be made or authorized to be made, and an oath or declaration signed, by the inventor or one of the persons mentioned in

Many attorneys have offices or representatives in the Washington area and it sometimes expedites business to interview them concerning an application. When the examiner believes the progress of the application would be advanced by an interview, he or she may call the attorney in the application by telephone and ask the attorney to come to the Office.

Registered attorneys or agents not of record in a patent application and acting in a representative capacity under 37 CFR 1.34(a) should not be telephoned for restriction requirements, approval of examiner's amendments, or given any information relative to such patent application by telephone unless the telephone number of such attorney or agent appears in a paper signed by the applicant or an attorney or agent of record.

Examiners should place all long distance telephone calls through the FTS (Federal Telecommunications System), even though collect calls may have been authorized by the attorney.

To facilitate any telephone calls that may become necessary, it is strongly recommended that amendments, letters of transmittal, and powers of attorney include the complete telephone number, with area code and extension, of the person with whom the interview should be held, preferably near the signature.

In new applications, the telephone number may appear on the letter of transmittal or in the power of attorney, oath, or declaration, next to the attorney's name and address.

## **SPECIFIC TELEPHONE INTERVIEW SITUATIONS**

For restriction of invention, see MPEP § 812.01.

For multiplicity, see MPEP § 2173.05(n).

### **409 Death, Legal Incapacity, or Unavailability of Inventor**

If the inventor is dead, insane, or otherwise legally incapacitated, refuses to execute an application, or cannot be found, an application may be made by someone other than the inventor, as specified in 37 CFR 1.42-1.47, and 37 CFR 1.423, MPEP § 409.01 - § 409.03(j).

A minor (under age 18) inventor may execute an oath or declaration under 37 CFR 1.63 as long as the person is competent to sign (i.e., understands the doc-

ument that he or she is signing); a legal representative is not required to execute an oath or declaration on the minor's behalf. See 37 CFR 1.63(a)(1).

### **409.01 Death of Inventor**

Unless a power of attorney is coupled with an interest (i.e., an attorney is assignee or part-assignee), the death of the inventor (or one of the joint inventors) terminates the power of attorney given by the deceased inventor. A new power from the heirs, administrators, executors, or assignees is necessary if the deceased inventor is the sole inventor or all powers of attorney in the application have been terminated (but see MPEP § 409.01(f)). See also 37 CFR 1.422.

#### **409.01(a) Prosecution by Administrator or Executor**

##### *35 U.S.C. 117. Death or incapacity of inventor*

Legal representatives of deceased inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor.

##### *37 CFR 1.42. When the inventor is dead.*

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent. Where the inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention.

One who has reason to believe that he or she will be appointed legal representative of a deceased inventor may apply for a patent as legal representative in accordance with 37 CFR 1.42.

Application may be made by the heirs of the inventor, as such, if there is no will or the will did not appoint an executor and the estate was under the sum required by state law for the appointment of an administrator. The heirs should identify themselves as the legal representative of the deceased inventor in the oath or declaration submitted pursuant to 37 CFR 1.63 and 1.64.

#### **409.01(b) Proof of Authority of Administrator or Executor**

The Office no longer requires proof of authority of the legal representative of a deceased or incapacitated

inventor. Although the Office does not require proof of authority to be filed, any person acting as a legal representative of a deceased or incapacitated inventor should ensure that he or she is properly acting in such a capacity.

#### **409.01(c) After Administrator or Executor Has Been Discharged**

When an administrator or executor has performed his or her functions and has been discharged and it is desired to make an application for an invention of the deceased, it is necessary for the administrator or executor to take out new letters of administration in order that he or she may file a new application for an invention of the deceased inventor.

#### **409.01(d) Exception in Some Foreign Countries**

The terms "Executor" and "Administrator" do not have exact counterparts in all foreign countries, and therefore, those terms must be construed to fit the circumstances of the case. Hence, the person or persons having authority corresponding to that of executor or administrator are permitted to make application as, for example, the heirs in the Federal Republic of Germany where no existing executor or administrator has been or will be appointed.

#### **409.01(e) If Applicant of Assigned Application Dies**

When an applicant who has prosecuted an application after assignment, dies, the administrator of the deceased applicant's estate may carry on the prosecution upon filing letters of administration unless and until the assignee intervenes (MPEP § 402.07).

#### **409.01(f) Intervention of Executor Not Compulsory**

When an inventor dies after filing an application and executing the oath or declaration required by 37 CFR 1.63, the executor or administrator should intervene, but the allowance of the application will not be withheld nor the application withdrawn from issue if the executor or administrator does not intervene.

This practice is applicable to an application which has been placed in condition for allowance or passed

to issue prior to notification of the death of the inventor. See MPEP § 409.01.

When a joint inventor of a *pro se* application dies after filing the application, the living joint inventor(s) must submit proof that the other joint inventor is dead. Upon submission of such proof, only the signatures of the living joint inventors are required on the papers filed with the USPTO if the legal representative of the deceased inventor does not intervene. If the legal representative of the deceased inventor wishes to intervene, the legal representative must submit an oath or declaration in compliance with 37 CFR 1.63 and 1.64 (e.g., stating that he or she is the legal representative of the deceased inventor and his or her residence, citizenship and post office address). Once the legal representative of the deceased inventor intervenes in the *pro se* application, the signatures of the living joint inventors and the legal representative are required on the papers filed with the USPTO.

#### **409.02 Insanity or Other Legal Incapacity**

*37 CFR 1.43. When the inventor is insane or legally incapacitated.*

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may make the necessary oath or declaration, and apply for and obtain the patent.

When an inventor dies prior to the filing of an application and prior to executing the oath or declaration required by 37 CFR 1.63 and no legal representative has been appointed, one must be appointed by a court of competent jurisdiction for the purpose of execution of the oath or declaration of the application.

#### **409.03 Unavailability of Inventor**

*35 U.S.C. 116. Inventors*

When an invention is made by two or more persons jointly, they shall apply for patent jointly and each make the required oath, except as otherwise provided in this title. Inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.

If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. The Director, on proof of the pertinent facts and after such notice to the omitted inventor as he prescribes, may grant a patent to the inventor making the application, subject to